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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

ORIGINAL COPY

CHARLES MILTON WANTLAND

Petitioner

v.

STATE OF MARYLAND

Respondent

ON WRIT OF CERTIORARI TO THE
COURT OF APPEALS OF MARYLAND

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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INTRODUCTION

This Brief in Opposition to the Petition for Writ of Certiorari is filed pursuant to this Court's request.

QUESTION PRESENTED

Whether Petitioner's statements were properly introduced in evidence after a correct finding that they were made voluntarily and in compliance with Miranda* and were not tainted by any prior constitutional violation.

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OPINION BELOW

The opinion of the Court of Special Appeals of Maryland is reported at 45 Md.App. 527, 413 A.2d 1376 (1980).

JURISDICTION

Petitioner invokes this Court's jurisdiction under 28 U.S.C. §1257(3).

STATEMENT OF THE CASE

On Sunday, June 18, 1978, Donnie Henley's body was found on the grounds of the Berger Mansion in Prince George's County, Maryland. Petitioner worked and resided there. Corporal Hatfield, who was assigned to the case, interviewed people in the area, including Petitioner.

Hatfield and Officer McNally arrived at the mansion at approximately 10:30 p.m. and observed a woman sitting in a car in the driveway. She informed them that she had just brought Petitioner home and he was inside the mansion with her two sons. Petitioner came out of the mansion with the two boys, approached McNally, and inquired, "Can I help you?".

The officers identified themselves and informed Petitioner that they were investigating the murder of a young boy whose body was found on the mansion grounds. Petitioner indicated that he had heard of the event. They said they would like to get a statement from Petitioner at the Bureau of Criminal Investigation (BCI), and he responded, "No problem." The officers indicated that he could drive or have the lady drive him to BCI but Petitioner did not have a car and the lady had to go home. They then told him that they would give him a ride to and from BCI, to which he agreed. The three of them left after Petitioner turned off the lights in the mansion and briefly spoke to the lady.

They arrived at BCI at approximately 11:00 p.m. and went into Interview Room No. 1. Petitioner was asked if he wanted anything to drink and he indicated he would like some coffee. Hatfield obtained some statement forms and coffee and went back into the room.

Hatfield obtained a statement from Petitioner, in question and answer form, starting at 11:23 p.m. The interview was interrupted on numerous occasions when Hatfield left to relay information and leads to other investigators and to get more coffee for Petitioner and himself. Petitioner also left the room to pour himself coffee. Throughout the interview Petitioner was smoking Pall Mall cigarettes. Other than to request coffee, he made no other requests of Hatfield while being interviewed. According to Hatfield, at no time prior to or during the interview was Petitioner under arrest. He was not restrained in any manner and never indicated a desire to leave or to terminate questioning.

After giving the written statement, in which Petitioner told Hatfield that he had just been paroled after serving six years of a thirty year sentence for second degree murder and had been drinking the day before, Petitioner asked Hatfield whether he was going to get in trouble with the Parole Board. Petitioner also told Hatfield, after his written statement, that prior to the murder in Baltimore he had been drinking and that on the day before, June 17th, he may also have blacked out. Hatfield told Petitioner he would not get into trouble with the Parole Board as a result of his cooperation.

At that point, Hatfield left the room and gave the information he had obtained to Corporal Rowzie. Hatfield never requested Petitioner to sign the statement but his signature was obtained later on the morning of June 19th at approximately 4:00 a.m. by Corporal Nyland after he reviewed the statement with Petitioner and made several corrections.

Hatfield did not give Petitioner his Miranda warnings because he never regarded him as anything other than a witness the entire time he was with him. Also, Hatfield testified that during the time he spent with Petitioner, he did not obtain information which indicated to him that Petitioner should be placed under arrest.

Shortly after 4:00 a.m. on June 19, 1978, Corporals Tucker and Morrissette entered Interview Room No. 1, whereupon Tucker informed Petitioner that he was under arrest and would be charged with the murder of Donnie Henley.

Petitioner began to talk to Tucker, but Tucker stopped him and told him that although he, Tucker, wanted to hear what Petitioner had to say, he first had to advise him of his rights. Tucker then read a waiver of rights form to Petitioner and recorded his answers. Petitioner was then given the form and was asked to read and sign it, which he did. Tucker and Morrissette then also signed the form and Morrissette left the room with it. In response to the question, "Are you willing to make a statement without a lawyer at this time", Petitioner responded, "No."

Upon completing the waiver form, however, Petitioner continued talking to Tucker, who stopped him a second time and said:

> ". . . 'You were talking to me before, I stopped you to advise you of your rights, you are talking to me now, and yet on the form you said you didn't want to talk to me without a lawyer present. Why did you put 'no' if you were going to talk to me.?'
>
> He said, 'That is not what I meant. I meant I wouldn't write anything or sign anything.' He said he was willing to talk to me without a lawyer present. I specifically asked him that, what he meant by the 'no', was he would not write anything or sign anything.' He said he was willing to talk to me without a lawyer present. I specifically asked him that, what he meant by the 'no', was he would not write anything or sign anything.
>
> I said, 'You are willing to talk to me without a lawyer present?'
>
> And he said, 'Yes.'
>
> I said, 'If you want I will leave the room and leave you alone.'
>
> He said, 'No. You can talk to me.'
>
> I still didn't ask him anything about the case. His next question was whether he could go to the bathroom. I took him to the bathroom."

Petitioner further clarified for Corporal Tucker his earlier indication on the form that he didn't want to make a statement without a lawyer present:

> "He said when he was arrested for murder before he made a statement to the police and it was in error and it was admitted at the time of the trial, and he didn't want to do that again.
>
> Q. So, he indicated to you that his request was directed to not making a statement in writing?
>
> A. That is right. He said he wouldn't write anything and he wouldn't sign anything.
>
> Q. And did you ask him to write anything or sign anything?
>
> A. No, I didn't."

After this exchange, Petitioner asked if he could use the facilities and have more coffee and Pall Mall cigarettes. These requests were honored. Upon their return to the interview room, Petitioner asked what was going to happen to him. Tucker explained the presentment proceedings, and that a bond hearing would also occur. Tucker testified that he did not use force, threats, or promises to obtain a statement from Petitioner. Tucker also testified that had Petitioner indicated he wanted a lawyer, he would have attempted to get him one.

Petitioner continued to talk to Tucker in general conversation not relevant to the case and then Tucker said:

> "I want you to tell me about the case, and I want to know what you[r] side of it is. Any number of things could have happened between you and the Henley boy. I don't know what they could have been, and I want you to tell me about it."

Petitioner then made a statement to Tucker which took approximately twenty minutes. Appellant was very talkative and appeared totally relaxed during his statement. After the inteview was completed, Tucker photographed and fingerprinted Appellant.

After Petitioner was processed by Tucker at BCI, he was transported to Upper Marlboro for presentment before a District

Court Commissioner by Corporals Rowzie and Nyland. At that time, approximately 8:10 a.m., he was again advised of his right to counsel by the Commissioner.

Later that evening, at approximately 5:11 p.m., Corporal Morrissette transported Petitioner from the County Detention Center to Prince George's County General Hospital for the purpose of executing a search and seizure warrant for blood and saliva samples. They arrived at the hospital at approximately 5:33 p.m. and waited for the doctor to arrive. At that time Corporal Morrissette testified:

> ". . . I noted [Petitioner] appearing to be depressed. He was seated in a chair. He was not handcuffed at the time. He was -- he had his head bent forward and staring at the floor, and I asked him if he was all right.
>
> Q. Did he reply to that?
>
> A. He stated that he was. I asked him if he had encountered any problems while he was at the County Detention Center. He said, no, that he could take care of himself.
>
> Q. Did he proceed to say anything further at that point?
>
> A. I then inquired if there was anything I could do for him and he stated to me that no one had listened to him. And I asked him about what. And he replied about the crime itself. And I said that I would listen to him, but I did not think that this was the time or the place to do it and that we would do it after we had completed the retrieval of the samples."

After the samples were obtained, Morrissette took Petitioner to BCI, arriving there at approximately 7:15 p.m. Morrissette placed Petitioner in Interview Room No. 3 and left the room to remove his gun. Upon his return he informed Petitioner of his rights using the Miranda warning card provided by the State's Attorney's Office. After reading the card to Petitioner, Morrissette asked if Petitioner understood, and he responded, "Yes". He also responded, "Yes" when asked if he was willing to make a statement wihout a lawyer present, and, "No" when asked if any promises, threats, or inducements had been made to pressure

or coerce him into making this statement. Petitioner then asked for and received a cup of coffee. He appeared to know what he was doing and was alert.

Petitioner began talking and after a while, Morrissette asked if he would submit to writing what he had just told him. Petitioner stated "that he would not put anything in writing until he had an opportunity to talk to a lawyer. Once he spoke with a lawyer then he would put it into writing". During this entire period, approximately one and one-half hours, Petitioner was smoking Pall Malls. At the completion of his statement, Petitioner was transported back to the County Detention Center. Enroute he asked the officers to stop and purchase a pack of Pall Malls for him and they did. After returning Petitioner to the Detention Center, Morrissette immediately returned to BCI and recorded his recollections of the conversation he had just had with Petitioner.

Sixteen days later, on July 5, 1978, Corporal Rowzie went to the Prince George's County Detention Center for the purpose of interviewing Petitioner. Before the correctional officer would allow Petitioner to speak with Rowzie, he presented Petitioner with a form and read it to him. Petitioner signed the form which indicated that Petitioner waived his right to have an attorney present during his interview with Rowzie.

Following this procedure, Rowzie gave Petitioner his Miranda warnings. Petitioner indicated he already had an attorney but did not desire his presence at that time. Petitioner then made a statement to Rowzie.

Petitioner never confessed to killing Donnie Henley. In his statements he admitted being with the victim at a time which was later determined to be soon before the murder but because of his "blackout" from drinking he was not able to provide any more information.

Information isolating Petitioner as the last person seen with Donnie Henley was given to the police by Eric Faulkner. Eric had seen Petitioner and Donnie walking up the driveway to the mansion together. His descriptions of Petitioner's person and clothing matched perfectly the descriptions given by Kim Belknap, Tina Radcliffe and Sean Deere who made positive photographic identifications of Petitioner. The clothing and boots, which Petitioner was seen wearing while walking with Donnie, were found in a charred condition on the grounds of the Berger Mansion where Petitioner resided on the day the body was recovered. Petitioner was known to be a chain smoker of Pall Mall cigarettes and cigarette stubs of this brand were found at the immediate scene where the body was recovered.

REASONS FOR DENYING THE WRIT

A.

PETITIONER'S MIRANDA RIGHTS WERE HONORED.

Petitioner repeatedly indicated that he wanted to talk to the police despite being told that he didn't have to. He even complained to Corporal Morrissette at the hospital that no one had listened to him. Petitioner did not testify at the suppression hearing to dispute the officers' account of his treatment and behavior. The determination by the trial court and the Court of Special Appeals of Maryland that all statements admitted at trial were voluntary is amply supported by the record.

Petitioner claims that this case involves the proper application of the principles announced in Miranda v. Arizona, 384 U.S. 436 (1966) and focuses on his refusal to give a written statement as an indication that he did not fully understand his rights. Respondent submits, however, that the record indicates instead that Petitioners's assertion that he would give an oral, but not a written, statement was based on his alleged prior experience with an inaccurately transcribed record of a

statement. This did not reflect any misunderstanding about the relative admissibility of oral and written statements. Corporal Tucker did not let Petitioner talk to him until he had clarified Petitioner's initial response. There is simply no support for Petitioner's claim that the police did not scrupulously honor his rights under Miranda. The facts of this case stand in stark contrast to those in State v. Jones, 37 Ohio St.2d 21, 306 N.E.2d 409 (1974); United States v. Nielson, 392 F.2d 849 (7th Cir. 1968); People v. Plyler, 86 Mich.App. 272, 272 N.W.2d 623 (1978); and People v. Thiel, 26 A.D.2d 897, 274 N.Y.S.2d 417 (1966), where equivocal responses by defendants were not followed by clarifying discussions prior to the taking of statements. In Jones, the defendant testified that he actually did not know that oral statements could be used against him and the appellate court noted that the record revealed no reason, other than this misunderstanding, for the defendant to agree to talk but not to write. Here, not only did Petitioner not testify that he actually misunderstood his rights, but the record reflects a reason other than a possible misunderstanding for Petitioner to wish to talk but not to write.

This case is also readily distinguishable from Edwards v. Arizona, No. 79-5269, argued before this Court November 5, 1980. In Edwards, 122 Ariz. 206, 594 P.2d 72 (1979) (en banc), the Supreme Court of Arizona found that the defendant initially refused to talk to police without consulting counsel and only later waived that right and agreed to talk but not to be taped. Here, there was no invocation of the Miranda rights; rather Petitioner's apparent request for counsel was immediately clarified as a willingness to talk without counsel, but a refusal to write a statement. On the other hand, here, as in Edwards, the police made sure Petitioner ultimately understood his rights before he made the statements.

This case, thus, does not indicate a necessity for further explanation of Miranda. The Court of Special Appeals of Maryland fully articulated the proper standards for determining the admissibility of a defendant's statement and properly applied them to the facts in this case.

B.

THE STATEMENTS WERE NOT TAINTED BY ANY PRIOR UNCONSTITUTIONAL POLICE ACTION.

Assuming there was a Miranda violation in taking his initial statements, Petitioner contends that all later statements should have been suppressed as "fruit of the poisonous tree." The Court of Special Appeals held that a "mere Miranda" violation does not trigger such an analysis. Respondent submits that the Court of Special Appeals is correct and that, in any event, the later statements were not obtained by exploitation of the earlier, assumed illegality.

Several courts, in addition to those in Maryland, have relied on Michigan v. Tucker, 417 U.S. 433 (1974), for the proposition that:

> "Miranda warnings are not constitutional rights in themselves, but are merely standards designed to safeguard the Fifth Amendment privilege against self-incrimination." Smith v. Wainwright, 581 F.2d 1149, 1152 (5th Cir. 1978).

Accord, United States v. Lemon, 550 F.2d 467, 473 (9th Cir. 1977). Without a constitutional violation, the doctrine of Wong Sun v. United States, 371 U.S. 471 (1963), i.e., that fruits of police conduct which actually infringed a defendant's constitutional rights must be suppressed, is inapplicable. See also, United States ex rel. Hudson v. Cannon, 529 F.2d 890, 894 (7th Cir. 1976).

Although not articulating the rationale as clearly as the Maryland courts, others have refused to suppress statements which follow Miranda violations unless there is coercion in addition to

the technical violation. See e.g., People v. Jenkins, 106 Cal.App.3d 731, 165 Cal.Rptr. 361, 366 (Ct.App. 1980); United States v. Toral, 536 F.2d 893, 896 (9th Cir. 1976) ("the proper inquiry is whether the conditions that rendered the pre-warning admissions inadmissible carried over to invalidate appellant's subsequent confession.")

As stated at the outset, Petitioner had an overwhelming desire to talk to the police. He even complained that they were not listening to him. The later statements, made to different police officers after repeated warnings and significant lapses of time, were no more extensive than the first. They were not obtained by exploitation of any earlier Miranda violative statement and were properly admitted under any theory.

C.

THE ADMISSION OF PETITIONER'S STATEMENTS, IF ERROR, WAS HARMLESS BEYOND A REASONABLE DOUBT.

As recited in the statement of facts, Petitioner did not confess. He merely admitted being with Donnie Henley prior to the murder and said he must have blacked out from drinking. Independent evidence clearly established that Petitioner was the last person seen with Donnie Henley. The clothing worn by Petitioner at that time was later found burned and charred on the grounds of the Berger mansion. Petitioner was known to be a chain smoker of Pall Mall cigarettes and Pall Mall cigarette stubs were found near the body. This cumulation of circumstantial evidence, proving all that Petitioner admitted in his statements, renders their admission harmless, even if erroneous. Chapman v. California, 386 U.S. 18 (1967).

CONCLUSION

For the aforegoing reasons, it is respectfully submitted that the Petition for Writ of Certiorari to the Court of Appeals of Maryland should be denied.

Respectfully submitted,

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